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January 10, 2012

BY HAND DELIVERY

The Honorable Richard M. Berman
United States District Judge
United States District Court
Southern District of New York
500 Pearl Street, Room 1320
New York, New York 10007

Re: **Stanley Madaloni v. Mada Design, Inc.,**
Civil Action No. 11 CIV 5086 (RMB) (DCF)

Your Honor:

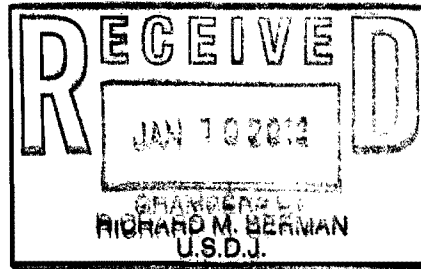
We are counsel to the plaintiff Stanley Madaloni in the above-captioned matter and we are writing in response to the January 9 letter of Marc Wenger, who represents the defendant Mada Design. For your convenience, a copy of Mr. Wenger's letter is attached hereto. You entered a Case Management Order on September 8, which required all discovery to be completed by January 9. The parties exchanged Initial Disclosures on November 3, but defendant did not respond to our November 7 request to exchange documents specified in the Initial Disclosures. Nor has defendant responded to our discovery demands which were due November 21.

Because defendant has ignored the discovery rules and this Court's order, the matter was referred to Magistrate Judge Freeman who required defendant to release the documents specified in these Initial Disclosures. In writing to her on December 5, defendant revealed that it planned to file for bankruptcy or dissolution. This prompted my December 9 letter to your Honor, requesting that we be allowed to amend the Complaint to add as a defendant another entity which was party to the relevant Employment Agreement. Your Honor indicated that this request would be discussed on January 12.

Magistrate Judge Freeman had numerous telephone conferences with the parties to try to resolve the matter. She stayed discovery until January 9, while extending the discovery deadline until January 31, on defendant's representations that they would be willing to settle the case

MEMO ENDORSED

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along the lines discussed at the December 21 conference. We prepared a settlement agreement along the lines discussed and sent it to defendant's counsel on December 29. No reply was received, and we were forced to call on January 6 to learn that defendant was no longer willing to enter into any settlement because it had now definitely decided to file for bankruptcy. This intransigent attitude led Magistrate Judge Freeman to allow her stay order to expire. We have subsequently re-noticed discovery.

We believe the previously-scheduled January 12 conference is still necessary so that defendant may explain why it should not be sanctioned for their decision to ignore the Federal Rules and court orders for the last four months and their unwillingness to enter into a settlement which would not cost the defendant a dime if they do in fact carry out their plan to file for bankruptcy. Whether the second party to the Employment Agreement should be added to the Complaint and the liability of shareholders under the Business Corporation Law will also need to be discussed. Consequently, we see no reason to stay the conference or extend the stay of discovery.

Respectfully submitted,

Anthony J. Costantini

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AJC/gg

cc: The Honorable Debra Freeman
Marc S. Wenger, Esq. (via e-mail)
David R. Ehrlich, Esq. (via e-mail)
Keith D. Greenberg, Esq.

<p><u>We will discuss this issue</u> <u>at the conference on January</u> <u>12, 2012. Counsel is directed</u> <u>to appear at the conference</u> <u>with their senior most principals.</u></p> <hr/> <p>SO ORDERED: Date: <u>1/10/12</u> <u>Richard M. Berman</u> Richard M. Berman, U.S.D.J.</p>
